

EX PARTE OR LATE FILED



Robert W. Quinn, Jr.  
Director - Federal Government Affairs

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June 10, 1999  
**RECEIVED**

JUN 10 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW Room TWB-204  
Washington, D.C. 20554

Re: Ex Parte Presentation: CC Docket No. 96-98, CCBPol 97-4 Petition for MCI  
Declaratory Ruling That New Entrants Need Not Obtain Separate License or Right-to  
Use Agreements Before Purchasing Unbundled Network Elements

On Thursday June 10, 1999 a letter was delivered containing the attached  
informative material to Mr. Larry Strickling, Chief of the Common Carrier Bureau  
with regard to the above captioned docket

Two copies of this Notice are being submitted to the Secretary of the FCC in  
accordance with Section 1.1206(a)(1) of the Commission's rules.

Sincerely,

Attachment

cc: Lawrence Strickling  
Don Stockdale  
Carole Matthey  
Michelle Carey  
Jake Jennings  
Claudia Fox

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List ABCDE



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June 10, 1999

Mr. Lawrence Strickling  
Chief Common Carrier Bureau  
Federal Communications Commission  
445 Twelfth Street, SW Room TWB-204  
Washington, D.C. 20554

Re: Ex Parte Presentation: CC Docket No. 96-98: CCBPol 97-4 Petition for MCI  
Declaratory Ruling That New Entrants Need Not Obtain Separate License or Right-to  
Use Agreements Before Purchasing Unbundled Network Elements

Dear Mr. Strickling:

Enclosed please find an "Accessible Letter" issued by Pacific Bell on May 12, 1999, explaining its latest policy on Third Party Intellectual Property rights. As explained in AT&T's May 24<sup>th</sup> response to that letter, the new policy issued by Pacific Bell directly contravenes the California Public Utilities Commission Order rejecting Pacific's 271 application issued last December.

Despite some progress by the state commission on this important issue, Pacific Bell's actions confirm that there is still a need for expeditious Commission action in this area. Please call me if you have any question regarding this matter.

Sincerely,

Attachment

cc:

Carol Matthey  
Don Stockdale  
Michael Pryor  
Michelle Carey  
Don Stockdale  
Jake Jennings  
Claudia Fox  
Jordan Goldstein



Rosalie E. Johnson  
General Attorney

785 Folsom Street  
Room 2149  
San Francisco, CA 94107  
415-442-2803  
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rejohnson@att.com

May 24, 1999

Duane Henry  
Pacific Telesis Legal Group  
140 New Montgomery Street, Room 1727  
San Francisco, CA 94105

Re: Accessible Letter CLECC99-166

Dear Mr. Henry:

On May 12, Pacific Bell issued Accessible Letter CLECC99-166 on the subject of CLEC access to intellectual property imbedded within UNEs which the CLEC purchases from Pacific Bell. The purported process established by Pacific Bell neither complies with the CPUC's decision rejecting Pacific Bell's first 271 application (D. 98-12-069), nor the terms of our Interconnection Agreement with Pacific Bell. To the extent it does not comply with this decision and our Agreement, this unilateral policy change by Pacific Bell is anti-competitive and unacceptable.

Under D. 98-12-069, when a CLEC purchases UNEs from Pacific Bell involving access to intellectual property, Pacific is required to: (1) provide a list of the software vendors; (2) provide a description of the "specific license agreements for each type of software, i.e., specific uses, limits on numbers of users, or number of minutes; and (3) upon written request from the CLEC, "shall negotiate any necessary RTU agreements for use of the software which parallels that in its own agreement with the vendor." (Id. at p. 152). Pacific is not permitted to charge CLECs for any additional licenses that may be necessary, or Pacific's efforts in obtaining them. Id. Accessible Letter CLECC99-166 fails to identify a single UNE which AT&T is ordering which involves access to intellectual property, and certainly does not provide the necessary list of software vendors or specific license agreements. Pacific Bell's vague assertion that a CLEC purchase of UNEs "may involve access to intellectual property" falls far short of satisfying the conditions established by the Commission. Once AT&T receives the required information from Pacific

Duane Henry  
May 24, 1999  
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Bell for UNEs ordered by AT&T, the parties may then proceed as outlined above.

In the meantime, AT&T once again rejects this unilateral attempt by Pacific Bell to modify the terms of CPUC decisions and our Interconnection Agreement. Pacific Bell is not free to do either. We will neither accept nor recognize this Accessible Letter. Instead, we will comply with the terms of our Agreement and the decisions of the CPUC.

To avoid potential conflicts, we demand that you immediately withdraw Accessible Letter CLECC99-166.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Rosalie E. Johnson".

Rosalie E. Johnson

cc: P. O'Sullivan, Pacific Bell  
S. DeYoung, AT&T

**"UNE Third-Party Software Right-to-Use (RTU) Requirement - California"**

Date: May 12, 1999

Number: CLECC99-166

Contact: Pacific Bell Account Manager

The purpose of this letter is to provide notice to all CLEC's that the purchase of certain Unbundled Network Elements (UNE's) may involve access to intellectual property (e.g., switch feature software, OSS software) which is proprietary to Pacific's third-party suppliers. Where such access is required in connection with a CLEC's purchase of a UNE, a separate right-to-use (RTU) license agreement may be required to be executed between the respective supplier(s) and the CLEC to enable such access and use.

A CLEC has the right to negotiate its own RTU agreements directly with Pacific's suppliers. For this purpose, Pacific will make available to any CLEC who purchases UNE's involving access to such third-party software a reference list of the software agreements that Pacific maintains with its suppliers. These lists will be maintained by Pacific and updated on a periodic basis.

If a CLEC chooses not to negotiate its own RTU agreements directly with Pacific's supplier(s), upon receipt of a specific written request and authorization, Pacific will negotiate, to the extent possible, any necessary RTU agreements on behalf of a CLEC for use of UNE software which parallels that in Pacific's own agreement with its suppliers. To facilitate Pacific's negotiation efforts, a CLEC will be required to cooperate with Pacific by providing all information related to the CLEC's intended uses of the software which may be deemed necessary by Pacific's software suppliers.

Prior to any negotiations, Pacific will require from a CLEC a written authorization to negotiate and a nondisclosure agreement which protects both Pacific and the applicable supplier(s) against the unauthorized disclosure of proprietary supplier information that may require disclosure in the process of facilitating negotiations.

The necessary form(s) may be obtained through the Pacific Bell Account Manager.